

International Union, United Mine Workers of America; District 17, United Mine Workers of America; Local 750, United Mine Workers of America; Local 1582, United Mine Workers of America; Local 6572, United Mine Workers of America and Fletcher Mining Company. Cases 9-CB-5555-1, 9-CP-268-1, 9-CB-5555-2, 9-CP-268-2, 9-CB-5555-3, 9-CP-268-3, 9-CB-5555-4, 9-CP-268-4, 9-CB-5555-5, and 9-CP-268-5

28 June 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 30 December 1983 Administrative Law Judge Marion C. Ladwig issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent filed a brief in opposition thereto.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found that Local 6572's president, William Cline, had joined the picket line solely in his individual capacity and not as president of Local 6572. The judge based his finding on Cline's testimony that he lived near the jobsite and that, while passing by on the strike's second day to get some drinking water, he decided to join the pickets in sympathy. In adopting the judge's finding, we also rely on Cline's uncontroverted testimony that Fletcher Mining's Kayford operation was outside Local 6572's geographical jurisdiction.

Member Hunter, in agreeing with the conclusion that Local 6572 was not responsible for the picket violence, emphasizes that while normally he would apply the presumption that picketing by a high level union official is done in his official capacity, here the record indicates the contrary. Thus, in view of the fact that Local 6572 had no primary interest in the picketing, and because there is no evidence that Cline carried any signs or otherwise identified Local 6572 with the picketing, Member Hunter finds that the evidence is insufficient to establish that Cline was acting in his capacity as a union agent.

The judge also cited in support of his finding the fact that Local 6572 never learned of Cline's involvement until it later received the unfair labor practice charge. Contrary to the judge, we accord no weight to this fact. It is well established that under the Act actual knowledge of an agent's activities is not a precondition for liability. See *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212 (1979).

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These cases were tried at Charleston, West Virginia, September 20-22, 1983.¹ The charges were filed by the Company May 2, and the consolidated complaint was issued June 7 and amended at the trial. A former union coal mining company began nonunion strip mining in an area where many union coal miners were laid off. Unemployed union miners (most of them wearing masks to conceal their identity) blocked the entrance, made threats, and destroyed company property.

The primary issues are (a) whether a District 17 official made an implied threat to cause the Company trouble if it refused to sign the union wage agreement, and (b) whether the International, District 17, and three UMW locals were responsible for the picketing and misconduct, violating Section 8(b)(1)(A) and Section 8(b)(7)(C) of the National Labor Relations Act.

On the entire record,² including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel, Respondent Unions, and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a West Virginia corporation, prospects and develops coal mine property, and repairs and transports coal mining equipment from its facility in Winifred, West Virginia, where it annually performs services valued over \$50,000 to users that ship coal valued over \$50,000 directly outside the State. I find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that each of the Respondent Unions is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Picket Line Violence

About 1978, when Fletcher Mining Company last worked under United Mine Workers' National Bituminous Coal Wage Agreement, the Company was a contract miner for Bethlehem Mines Corporation. Since then, the Company has worked nonunion, prospecting and developing coal mine property, and repairing and transporting surface mine equipment.

In 1982 the Company leased mineral rights at Howell Hollow in the Kayford region of Cabin Creek, a staunchly union area where hundreds of laid-off UMW members were on recall panels. In October or November, it began prospecting and developing the property for strip mining about a mile from where it previously employed UMW members under the wage agreement.

¹ All dates are in 1983 unless otherwise indicated.

² By agreement of the parties, G.C. Exhs. 8C and 11A, B, and C and Jt. Exhs. 1A, B, C, and D are received in evidence.

In January Virgil Bach Jr., a UMW member who had been laid off since November 1981, telephoned Company President Herman Fletcher. As Fletcher testified, Bach "asked me when I was going to start up there; was I going to hire the former employees of Bethlehem Mines; did I have to hire the former employees of Bethlehem Mines [on the recall panels]; when would I be hauling coal; what I was doing up there."

The Company was making road repairs, installing drainage, and proving out the coal reserves and mining conditions. As President Fletcher testified, "We're up there just trying to get this job ready. I don't have the surface mine equipment to do the job with, and if I have to go out here and buy all this equipment, I don't know whether I can raise the money." The Company was underfinanced even for doing this work. Ray Adkinson, one of the six employees, revealed at the trial, "I was paid once or twice, during the time I was working"; Fletcher had "told us he didn't have the money until we got the job started." Fletcher denied that he had had any intention of mining the property himself, but testified the thought had crossed his mind that if he did not get the price he was asking "from a surface mining contractor that had the equipment and expertise to do it, that I would take the job on." His prospecting permit permitted him to remove only 250 tons of coal from the property.

On April 14, despite the lack of proper strip-mining equipment, the Company began mining coal—in violation of state law for mining without the required permit.

On April 14, 15, and 18, admitted agents of some of the Respondent Unions talked to President Fletcher and his employees about working under a UMW wage agreement. Recognizing the Company's inability to pay the union wages and benefits without the proper surface mining equipment, all the employees opposed joining the UMW, and Fletcher refused to bargain without an election. The UMW had decided not to go to the expense of an election campaign. (There were about 20 nonunion mines in District 17.)

On Monday, April 25, violent mass picketing began. As the week progressed, the number of pickets increased from about 15 to about 30. Unemployed UMW member Bach led the picketing. Others identified on the picket line that week were UMW members Clifford Cline, Earl Stanley Jr. and Sr., and Bruce Buzzard. The remaining pickets—most of them wearing masks—were not identified.

The pickets blocked the entrance Monday and Tuesday of that week, and again Wednesday despite a state court injunction issued Tuesday against blocking or obstructing the entrance, and against committing or threatening violence. On Thursday, when President Fletcher and three others pressed through the picket line in a truck, the pickets hit the truck with rocks, breaking the windshield and door windows (a piece of glass getting into Fletcher's eye), flattening two tires with nails, and doing about \$800 worth of damage to the truck. On Friday, state police opened the way. After the police left, however, some of the 30 or so pickets entered the property; burned a supply shed built on the bed of a dump truck; broke out the headlights and windows of

another dump truck; damaged an end loader (breaking out the windshield, tearing out the radiator, and cutting wiring, hoses, and belts); damaged gauges, wiring, and batteries on an air compressor; and did other damage, totaling an estimated \$5000 or \$6000.

On that Monday and Wednesday, pickets threatened the Company's employees with no nonunion work on the property, and on Monday, Tuesday, and Wednesday, said they knew where various employees lived, implying harm to the employees at home. On Monday, one of the pickets knocked a camera from President Fletcher's hand, damaging it. Bach repeatedly asked Fletcher to sign a union contract.

There was peaceful picketing the following week until the Company ceased mining, after removing a total of 2448 tons of coal from the property. The Company was cited with violating WV Code 20-6-8F for removing more than 250 tons (under the prospecting permit), and ordered to "Immediately cease coal removal and begin reclaiming all disturbed areas. This includes backfilling; grading; and vegetation." (R.D. Exh. 1.)

B. Responsibility of Respondent Unions

1. Allegations and contentions

The complaint alleges that UMW member Bach was an "International Organizer" and that he and pickets Cline, Stanley, and Buzzard were agents of Respondent Unions.

The General Counsel failed to produce any evidence that Bach was an International organizer, that any of the Respondent Unions either authorized or paid for his organizing efforts, or that any of them authorized or encouraged the picketing, or established or maintained the picket line.

The General Counsel contends, however, that the coercive picketing was "in the context of . . . concerted activity involving every level of the Mine Workers' organization to bring about the common objective of a collective-bargaining agreement with Fletcher Mining," and that "the only possible logical conclusion is that each of the Respondents are jointly responsible for the totality of their acts and conduct." The General Counsel also contends that there was sufficient "adoption and ratification of Bach's conduct" to constitute him "an agent of at least the District which was . . . responsible for signing up coal operators" for the International, and that this was "sufficient to charge the District and the International with responsibility for his conduct and knowledge of other conduct on the picket line."

The Company contends that each of the Respondent Unions "either engaged in the illegal activity, by playing a part in the coordinated effort" or "subsequently ratified the illegal conduct."

2. Respondent Unions' organizing activity

In January Donald Barnett, the International's organizing coordinator in the Southeast Region, assigned one of his two organizers in District 17 to check on the Company's nonunion operation. He decided not to engage in an organizing and election campaign.

During the first 3 working days after the Company began mining coal on April 14, several union officials requested President Fletcher to sign the UMW wage agreement.

On April 14, District 17 Vice President Howard Green went to the property and talked to Fletcher about signing the agreement. Fletcher refused without an election. On April 15, Local 1582 Vice President Jerry Kerns went to observe the operation and Fletcher invited him to talk to his employees. Kerns left when the employees said they did not want to belong to the UMW.

On April 14 or 15, District 17 President Raymond Thompson sent a request for a meeting with Fletcher through Local 750 President Thomas Workman, who lived near the property. On April 15, Fletcher met with Thompson and District 17 Executive Board Member Robert Phalen in Thompson's office. Fletcher refused to sign an agreement unless his men voted for the Union, and invited the union officials to talk to his employees. On April 18, Thompson and Phalen, together with District 17 Vice President Green, went to the property and talked to the employees, with Fletcher present. The consensus was that the men did not want to be members of the Union.

The evidence does not disclose that the union officials initiated any further efforts to persuade the Company to sign the wage agreement. As indicated above, neither does the evidence disclose that any of the Respondent Unions authorized or encouraged the picketing that began April 25.

3. Asserted ratification of misconduct

On April 25, the first day of the picket line violence, the Company sought a state court injunction against pickets Bach, Stanley, and, by mistake, District 17 Executive Board Member Phalen. A District 17 staff attorney appeared at the hearing the next morning, representing Phalen and the two UMW members. (The staff counsel regularly represents individual UMW members.) The injunction was issued against Bach and Stanley, but not Phalen. After the hearing, Phalen talked to Bach about the picketing, telling him, "I don't know who's on the picket line up there, and I don't want to know, but I'll tell you this . . . Judge Hey's already said there better not be no violence up there," and if there is, "Judge Hey's going to come down pretty hard."

On April 28, Phalen received a call from picket Bach, who told Phalen that, as far as he could see, there was no violence on the picket line. Bach also said that he had had a conversation with President Fletcher, who wanted to meet at the District 17 office that afternoon concerning signing a contract. Phalen agreed to meet, but Fletcher did not appear.

On Friday evening, April 29, President Fletcher telephoned Phalen at his home. Fletcher blamed the UMW for what had happened to his property, and Phalen stated that that was "absolutely false" and that the Union had nothing to do with it. Fletcher threatened "to go down and burn the District 17 office . . . with all the people in it." After a heated conversation, Fletcher asked for a meeting. Phalen said, "Now, if you want to talk . . . in a right manner, I'll be glad to talk to you. But

you talking like this, I'm not talking to you." The next morning, Fletcher told his employees that there was a meeting at the union hall to see if they could work something out with the Union, and invited the employees to go with him.

In the unsuccessful April 30 bargaining session, there were three District 17 officials and one International official. They were District President Thompson, Vice President Green, and Executive Board Member Phalen and International Organizing Coordinator Barnett. They met with Company President Fletcher and three employees, Delbert Curry, Ron Javins, and Melvin Pilbeam. They discussed royalty payments, pension funds, the waiving of union dues for 4 months, mining conditions, the cost sheet that Fletcher and his employees had prepared the evening before, and whether the Company could afford operating under the UMW wage agreement.

When a vote was mentioned, as employee Curry recalled, Barnett stated they never intended to have an election or to organize that area. When Fletcher complained about pickets on his property, as Thompson credibly testified, "We told him definitely that the District and International were not on an organizing drive," "[w]e were not participating in it," and that "he asked for this meeting, we come to it on his request."

President Fletcher claimed at one point in the meeting that in his April 15 conference with District 17 officials Thompson and Phalen, Thompson made a statement that if Fletcher would sign a contract, Thompson would give him "protection." Thompson vigorously protested. As he credibly testified, "I told him no way did I tell him that I'd give any man protection. I made a statement that I would only give security to . . . his employees." Phalen also protested: "No, sir, that wasn't what was said. The word 'protection' was never mentioned." Phalen recalled that Thompson had stated, as benefits of a union agreement, "a stable work force and job security."

Fletcher did not deny Thompson's and Phalen's testimony that at this April 30 meeting they disputed his claim that Thompson had used the word "protection" in their April 15 conference. (Fletcher claimed in his earlier testimony at the trial that on April 15 Thompson "said they didn't want no trouble up there," and that when he asked Thompson what they offered the Company if he signed the contract, Thompson said, "I'll provide you with protection.") According to Fletcher, Thompson said at the April 30 meeting "he would like for me to sign the contract and not have any more trouble up there." He also claimed that when he asked "if I signed the contract, what would he do for me?" Phalen "said he would provide me security . . . Call the pickets off . . . stop the picketing," and "would send the word up Cabin Creek that I'd signed the contract that afternoon."

I find this testimony, as well as that of employee Pilbeam on the subject, is largely fabricated. (By their demeanor on the stand when testifying about the April 30 meeting, both Fletcher and Pilbeam appeared less than candid.) No other witness corroborated the claim that Thompson mentioned avoiding "any more trouble up there." Employee Curry (who impressed me as being an honest, forthright witness) recalled Phalen's using the

words "stable work force, security and no picketing." (Of course, there would be no picketing if Fletcher or anybody else notified the unemployed pickets that Fletcher had signed the UMW wage agreement. Curry also recalled that the words "stable work force and security" were used when Thompson, Green, and Phalen visited the jobsite April 18.)

Thompson (who also appeared to be a trustworthy witness) credibly testified that he referred to "security for [Fletcher's] employees" at both the April 15 and 30 meetings, telling Fletcher, "I thought he ought to become signatory to the contract so that the people up there would have security on that property." He credibly denied making any statements about signing a contract to end trouble, or connecting the trouble at the Company with signing the contract. Phalen recalled using the words "stable work force and job security" and credibly denied making any statements regarding sending word that the pickets would be called off, or anything of that nature.

I therefore find that the credible evidence fails to support the allegation in the complaint that on April 15 Thompson impliedly threatened to cause the Company trouble if it refused to cede to the demands that it execute a collective-bargaining agreement.

4. Concluding findings

It is clear that none of the Respondent Unions acted illegally during the first 3 working days after surface mining began on the site April 14. Union officials contacted Company President Fletcher and the employees, seeking support by the employees and requesting Fletcher to sign the UMW wage agreement. When these efforts failed, the union officials ceased the organizing efforts. The evidence does not disclose that they initiated any further efforts to persuade the Company to sign the wage agreement.

The real question in this proceeding is whether any of the Respondent Unions were responsible for the mass picketing and violence during the week of April 25-29 when unemployed union miners blocked the entrance, made threats, and destroyed company property.

The recent decision in *Feather v. Mine Workers*, 711 F.2d 530, 539 (3d Cir. 1983), gives the well-established legal standard for determining responsibility.

To be held liable for the actions of individuals, a union must be shown to have "instigated, supported, ratified or encouraged" the particular activities in question [citing *Kerry Coal Co. v. Mine Workers*, 637 F.2d 957, 963 (3d Cir. 1981), cert. denied 454 U.S. 823 (1981), and *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212 (1979)] In addition, when damages are claimed against an international union, a district, and a local, the plaintiff must make a separate showing of agency for each defendant.

In the absence of evidence that the Respondent Unions "instigated, supported . . . or encouraged" the violent picketing, the issue is whether any of them "ratified" the picketing.

International. It is clear that the participation of International Organizing Coordinator Barnett in the April 30 bargaining session did not constitute ratification of the unlawful picketing. The meeting was initiated by Company President Fletcher, not by any of the Respondent Unions. The International's participation in or responsibility for the picketing was disavowed during the meeting. Barnett emphasized that the International was not organizing or carrying on an election campaign in the area. I find that the International did not ratify the pickets' unlawful conduct.

District 17. District Executive Board Member Phalen disavowed the District's responsibility for the picket line conduct both on Friday evening, April 29, when Fletcher requested the April 30 meeting, and during the April 30 meeting. I find that the District did not ratify the picketing misconduct by (a) the District officials participating in this bargaining session with Fletcher at Fletcher's request; (b) Phalen agreeing on April 28 to meet with Fletcher when Fletcher made the request through picket Bach; (c) the representation of two of the UMW member pickets (as well as the erroneously charged Phalen) by District staff counsel at the injunction hearing (in view of regular representation of individual UMW members by the staff counsel); and (d) Phalen's cautioning picket Bach after the hearing against any violence on the picket line.

Local 750. Local 750 President Workman merely relayed District President Thompson's request for a meeting with Fletcher. This occurred about 10 days before the violent picketing began. There is no evidence that the local ratified the picketing misconduct.

Local 1582. Local 1582 Vice President Kerns went to the jobsite April 15 and talked to Fletcher and the employees about the UMW. There is no evidence that the local ratified the strike misconduct that began April 25.

Local 6572. This is a small local, with about 100 employed members and about 150 or more members laid off. William Cline, who lives near the Company's jobsite, is paid \$100 a month to serve as the Local 6572 president. He has never done any organizing as the local's president.

Cline passes the jobsite on the way to get drinking water. On April 26, the second day of the strike, he saw the laid-off UMW members on the picket line and joined them in sympathy. The local did not learn of his involvement until it received notice of the charge filed against it.

Under the circumstances, I find that Cline joined the pickets solely in his individual capacity and that Local 6572 did nothing to instigate, support, ratify, or encourage the violent picketing.

Accordingly, I find that none of the pickets were agents of any of the Respondent Unions and that none of the Respondent Unions were responsible for the unlawful picketing that occurred from April 25 to 29. I therefore find that the allegations in the complaint that the Respondent Unions violated Section 8(b)(7)(C) and Section 8(b)(1)(A) must be dismissed.

CONCLUSIONS OF LAW

The Respondent Unions did not commit any unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(C) and Section 8(b)(1)(A) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation³

ORDER

The complaint is dismissed.

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.